

**NO. 14-18-00302-CR**

**IN THE FOURTEENTH COURT OF APPEALS**  
**HOUSTON, TEXAS**

FILED IN  
14<sup>TH</sup> COURT OF APPEALS  
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**DUKE EDWARD, APPELLANT**  
**V.**  
**THE STATE OF TEXAS, APPELLEE**

**BRIEF FOR THE STATE OF TEXAS**

**CAUSE NUMBER 17CR1965**  
**IN THE 212TH JUDICIAL DISTRICT COURT**  
**OF GALVESTON COUNTY, TEXAS**

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**ORAL ARGUMENT WAIVED**

## **IDENTITY OF PARTIES AND COUNSEL**

Presiding Judge	Honorable Patricia Grady
Appellant	Duke Edward
Appellee	The State of Texas
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Attorney for State	Patrick Gurski and Colton Turner
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**NO. 14-18-00302-CR**

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FOR THE  
FOURTEENTH DISTRICT OF TEXAS  
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**DUKE EDWARD, Appellant  
V.  
THE STATE OF TEXAS, Appellee**

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**Appealed from the 212th Judicial District  
Court of Galveston County, Texas  
Cause No. 17CR1965**

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**BRIEF FOR THE STATE OF TEXAS**

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**TO THE HONORABLE COURT OF APPEALS:**

Now comes Jack Roady, Criminal District Attorney for Galveston County, Texas,  
and files this brief for the State of Texas.

<p>The one-volume Clerk's Record is referred to in the State's Brief as "C.R. page". The Reporter's Record is multiple volumes and is referred to as "R.R. volume number: page".</p>
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## **SUMMARY OF THE ARGUMENT**

In his sole issue, Duke Edward claims the evidence is insufficient to prove he was in a dating relationship as defined by Section 71.002(a) and (b) of the Texas Family Code. Appellant was convicted of the felony offense of knowingly and recklessly causing bodily injury to an individual in a dating relationship under Section 22.01(a) and (b)(2)(a) of the Texas Penal Code. Edward argues the court erroneously failed to grant his motion for directed verdict on this same issue. He further argues that the jury had insufficient evidence to convict him based on the evidence presented and the definition of dating relationship provided.

Viewing the evidence in the light most favorable to the jury's verdict, the evidence sufficiently proves Edward was the boyfriend of the victim, which falls within the definition of the term "dating relationship" as intended by 22.01 of the Texas Penal Code and 71.002(a) and (b) of the Texas Family Code. Edward's sole issue should be overruled.

## **STATEMENT OF FACTS**

On July 9, 2017, the victim in this case, Maggie Bolden, made an emergency 911 phone call to report a disturbance at her apartment.<sup>1</sup> The responding officer, Richard Hernandez with La Marque Police Department, was dispatched to the victim's residence

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<sup>1</sup> RR III, at 13, 14.

at 1721 Main Street, apartment #12.<sup>2</sup> When Officer Hernandez knocked on the apartment door, the victim immediately opened the door and exited.<sup>3</sup> The victim was hysterical and crying.<sup>4</sup> She appeared injured on her face and had blood on her shirt and face.<sup>5</sup> Officer Hernandez asked her “What’s going on” and she stated that “her boyfriend had beat her up”.<sup>6</sup> She said he was still inside the residence.<sup>7</sup> Maggie Bolden did not testify due to the State’s inability to locate her.<sup>8</sup> Her statements were objected to at trial, but admitted as an excited utterance through Officer Hernandez<sup>9</sup>, the bodycam video<sup>10</sup> and the 911 call.<sup>11</sup>

After Hernandez spoke to the victim, he called for the suspect to exit the apartment, but no one answered.<sup>12</sup> Officer Hernandez entered the apartment and found a man, later identified as Duke Edward, in the direction victim had pointed.<sup>13</sup> Edward was sitting on a bed in the back bedroom.<sup>14</sup> No injuries were observed on Edward.<sup>15</sup> No other person was in the apartment.<sup>16</sup> Bolden identified Edward as the person who

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<sup>2</sup> RR III, at 13.

<sup>3</sup> RR III, at 13.

<sup>4</sup> RR III, at 14.

<sup>5</sup> RR III, at 14.

<sup>6</sup> RR III, at 14.

<sup>7</sup> RR III, at 15.

<sup>8</sup> RR III, at 9.

<sup>9</sup> RR III, at 14.

<sup>10</sup> RR III, at 16; *see* State’s Ex.2.

<sup>11</sup> RR III, at 6; *see* State’s Ex.1.

<sup>12</sup> RR III, at 15.

<sup>13</sup> RR III, at 15.

<sup>14</sup> RR III, at 15.

<sup>15</sup> RR III, at 16.

<sup>16</sup> RR III, at 25.



assaulted her.<sup>17</sup> The apartment appeared that a disturbance had obviously taken place.<sup>18</sup>

On cross examination, Officer Hernandez testified that he had not spoken to the leasing office to see if appellant lived at the apartment.<sup>19</sup> Hernandez also admitted that he was unaware who started the disturbance or if Edward had been struck first by the victim.<sup>20</sup> Hernandez testified that he did not observe any evidence at the scene to indicate that a weapon had been used against Edward.<sup>21</sup> Hernandez testified that the victim did not identify Edward as her “boyfriend” on the body camera video<sup>22</sup> or the 911 recording,<sup>23</sup> both of which were admitted into evidence by the State.<sup>24</sup>

Licensed paramedic for La Marque, emergency medical technician Amanda Black, testified she was dispatched to the crime scene.<sup>25</sup> She remembered the victim as having been beaten badly and checked her out.<sup>26</sup> Black observed multiple lacerations, or cuts, all over the victim’s face and multiple contusions across her forehead.<sup>27</sup> Black testified that these injuries could only be sustained from multiple strikes.<sup>28</sup>

Black spoke with the victim, who told her that her “boyfriend” beat her up,<sup>29</sup> that

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<sup>17</sup> RR III, at 20.

<sup>18</sup> RR III, at 25.

<sup>19</sup> RR III, at 23.

<sup>20</sup> RR III, at 28.

<sup>21</sup> RR III, at 28.

<sup>22</sup> RR III, at 20, 21

<sup>23</sup> RR III, at 20.

<sup>24</sup> RR III, at 31, 41.

<sup>25</sup> RR III, at 31.

<sup>26</sup> RR III, at 31.

<sup>27</sup> RR III, at 34.

<sup>28</sup> RR III, at 34.

<sup>29</sup> RR III, at 31.

she was hit with his fist and kicked in the back, and she was hit in the face.<sup>30</sup> Black asked the victim if she was in pain.<sup>31</sup> She asked “on a scale of 1- to 10, 10 being the worst pain ever felt in your life, 1 being no pain at all” what is your pain level?<sup>32</sup> The victim told Black that she was “10 out of 10”.<sup>33</sup>

Black observed physical injuries on the victim’s face and head which were consistent with her descriptions of the assault.<sup>34</sup> This evidence was admitted over objection based upon the representation that it was made for medical diagnosis.<sup>35</sup> Subsequently, the State offered the medical records through this same witness.<sup>36</sup> The defense objected to the records and conducted a voir dire examination of the witness<sup>37</sup>. During the voir dire examination, Black stated that her partner, James Matthews, wrote the report and she did not remember if the victim told her or Matthews that appellant was her boyfriend.<sup>38</sup> The records were admitted with the relationship status redacted.<sup>39</sup>

On cross examination, Black testified that following her medical evaluation of the victim, she felt no bones were broken, the victim had not lost consciousness,<sup>40</sup> and that the victim was taken to Mainland Center Hospital.<sup>41</sup> Black testified that she did not

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<sup>30</sup> RR III, at 32.

<sup>31</sup> RR III, at 33.

<sup>32</sup> RR III, at 33.

<sup>33</sup> RR III, at 33.

<sup>34</sup> RR III, at 34.

<sup>35</sup> RR III, at 31.

<sup>36</sup> RR III, at 41.

<sup>37</sup> RR III, at 38, 39.

<sup>38</sup> RR III, at 38, 39.

<sup>39</sup> RR III, at 39.

<sup>40</sup> RR III, at 43.

<sup>41</sup> RR III, at 44.

evaluate Edward for injuries at the scene,<sup>42</sup> and she has no personal knowledge of how the disturbance took place.<sup>43</sup> Black testified that she had no firsthand information concerning the relationship between the victim and appellant and that she received her information from the medical report prepared by James Matthews.<sup>44</sup>

Additionally, Edward stipulated to evidence that he had previously been convicted of an assault family violence.<sup>45</sup>

At the close of the evidence, Edward's attorney moved for a directed verdict based on his perceived failure of the State to prove that the appellant and the victim were in a dating relationship.<sup>46</sup> The motion was denied.<sup>47</sup>

The jury convicted appellant of felony assault of a family member as defined by Section 71.0021(a) and (b) of the Texas Family Code.<sup>48</sup> After hearing punishment evidence, which included two prior felony convictions in sequential order, the jury sentenced appellant to 60 years in the Texas Department of Criminal Justice-Institutional Division.<sup>49</sup> This appeal followed.

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<sup>42</sup> RR III, at 44.

<sup>43</sup> RR III, at 44.

<sup>44</sup> RR III, at 43, 44.

<sup>45</sup> RR III, at 49.

<sup>46</sup> RR III, at 48, 50.

<sup>47</sup> RR III, at 49.

<sup>48</sup> RR III, at 72.

<sup>49</sup> RR IV, at 47.

### **SOLE ISSUE**

**How is the evidence insufficient so that the Trial Court should have granted appellant's motion for directed verdict? The evidence supports the verdict that appellant was in a dating relationship under the definition of that term in TEX. FAMILY CODE § 71.002(a), (b), (c). The case should have been allowed to go to the jury and the evidence presented at trial was sufficient evidence from which a rational trier of fact could find beyond a reasonable doubt that appellant was criminally responsible for the offense.**

### **ARGUMENT AND AUTHORITIES**

#### ***I. Standard Of Review***

How is the evidence insufficient so that the Trial Court should have granted appellants motion for directed verdict? The evidence supports the verdict that appellant was in a dating relationship under the definition of that term in TEX. FAMILY CODE § 71.002(a), (b), (c). The case should have been allowed to go to the jury and the evidence presented at trial was sufficient evidence from which a rational trier of act could find beyond a reasonable doubt that appellant was criminally responsible for the offense.

A motion for directed verdict is really a challenge to sufficiency of the evidence and thus, on review of denial of such motion, the appellate court views all evidence in the light most favorable to the verdict to determine whether any rational trier of fact

could have found essential elements of the offense beyond a reasonable doubt.<sup>50</sup>

In evaluating a challenge to the sufficiency of the evidence supporting a criminal conviction, the appellate court views the evidence in the light most favorable to the verdict.<sup>51</sup> The issue on appeal is not whether the reviewing court believes the State's evidence or believes that appellant's evidence outweighs the State's evidence.<sup>52</sup> The verdict may not be overturned unless it is irrational or unsupported by proof beyond a reasonable doubt.<sup>53</sup>

The trier of fact "is the sole judge of the credibility of the witnesses and of the strength of the evidence."<sup>54</sup> The trier of fact may choose to believe or disbelieve any portion of the witnesses' testimony and may draw reasonable inferences from basic facts to ultimate facts.<sup>55</sup> When faced with conflicting evidence, the appellate court presumes the trier of fact resolved conflicts in favor of the prevailing party.<sup>56</sup> If any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, the appellate court must affirm.<sup>57</sup>

Circumstantial evidence is as probative as direct evidence in establishing the guilt of a defendant, and circumstantial evidence alone can be sufficient to establish

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<sup>50</sup> *Garcia v State*, 827 S.W.2d 25 (Tex. App.--Corpus Christi 1992, pet. ref'd).

<sup>51</sup> *Wesbrook v. State*, 29 S.W.3d 103, 111 (Tex. Crim. App. 2000); *Bautista v. State*, 474 S.W.3d 770, 773-74 (Tex. App.--Houston [14<sup>th</sup> Dist.] 2014, pet. ref'd).

<sup>52</sup> *Wicker v. State*, 667 S.W.2d 137, 143 (Tex. Crim. App. 1984).

<sup>53</sup> *Matson v. State*, 819 S.W.2d 839, 846 (Tex. Crim. App. 1991).

<sup>54</sup> *Fuentes v. State*, 991 S.W.2d 267, 271 (Tex. Crim. App. 1999).

<sup>55</sup> *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010); *Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986).

<sup>56</sup> *Turro v. State*, 867 S.W.2d 43, 47 (Tex. Crim. App. 1993).

<sup>57</sup> *McDuff v. State*, 939 S.W.2d 607, 614 (Tex. Crim. App. 1997).

guilt.<sup>58</sup> Each fact need not point directly and independently to appellant's guilt, as long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction.<sup>59</sup>

**II. *The evidence sufficiently establishes Maggie Bolden had a dating relationship with the appellant, who she described as her "boyfriend" which complies with the family violence statute.***

A person commits the offense of assault causing bodily injury to a family member if he intentionally, knowingly or recklessly causes bodily injury to another, who is a person whose relationship to or association with the defendant is described by Section 71.0021(b) Texas Family Code.<sup>60</sup> That same assault becomes a felony if it is shown on the trial of the offense that the defendant has been previously convicted of an offense under chapter 22.01, against a person whose relationship to or association with the defendant is described by Section 71.0021(b).<sup>61</sup>

Dating relationship means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature.<sup>62</sup> The existence of such a relationship shall be determined based on consideration of (1) the length of the relationship; (2) the nature of the relationship; and (3) the frequency and type of

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<sup>58</sup> *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007).

<sup>59</sup> *Id.*

<sup>60</sup> TEX. PENAL CODE § 22.01(1).

<sup>61</sup> TEX. PENAL CODE § 22.01(b)(2)(a).

<sup>62</sup> TEX. FAM. CODE § 71.0021(b).

interaction between the persons involved in the relationship.<sup>63</sup> A casual acquaintance or ordinary fraternization in a business or social context does not constitute a “dating relationship”.<sup>64</sup>

The victim identified Edward as her “boyfriend” to Officer Hernandez and that he was present alone with her in her apartment. The evidence here is comparable to that other courts have found sufficient to prove a dating relationship.<sup>65</sup> Appellant argues the reviewing court should discount the victim’s words because the victim did not testify and she never mentioned the word “boyfriend” in either the bodycam video or the 911 call. The jury’s conclusion to believe the victim’s words is supported by the other evidence in the case.

It was reasonable for the jury to infer Edward was the boyfriend of the victim based upon the victim’s statements to police and paramedics who arrived at the scene. Appellant had access to the victim’s bedroom and was also alone with the victim in her apartment. The trier of fact is the sole judge of the credibility of the

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<sup>63</sup> TEX. FAM. CODE § 71.0021(b).

<sup>64</sup> TEX. FAM. CODE § 71.0021(c).

<sup>65</sup> See, e.g., *Tolleson v. State*, No. 02-11-00140-CR, 2012 WL 579477, at \*2, 2012 Tex. App. LEXIS 1423, at \*4-5 (Tex. App.—Fort Worth Feb. 23, 2012, no pet.) (mem. op., not designated for publication) (evidence sufficient to show the parties were in a dating relationship when victim testified she and the defendant were “boyfriend-girlfriend” and had been living together for eighteen months); *Caballero v. State*, No. 03-09-00473-CR, 2010 WL 2133927, at \*4, 2010 Tex. App. LEXIS 4072 at 11-12 (Tex. App.—Austin May 28, 2010, pet. ref’d) (mem. op., not designated for publication) (evidence sufficient to show parties were in a dating relationship when testimony showed the couple had been living together “on and off for eight months,” that they were a “couple” and “in a relationship” and that they were affectionate with one another). See also *Villarreal v. State*, 286 S.W.3d 321, 324 (Tex. Crim. App. 2009) (evidence couple dated for about a month and occasionally spent the night at the other's residence showed dating relationship).

witnesses.<sup>66</sup> As quoted above, the jury resolved any conflicts in the testimony when it found Edward guilty.<sup>67</sup>

Furthermore, the victim's statements to police that Edward was her "boyfriend" were made when she was excited, crying and in a bit of hysteria.<sup>68</sup> Excited-utterance hearsay exception is based on the assumption that, at the time of the statement, the declarant is not capable of the kind of reflection that would enable the declarant to fabricate information.<sup>69</sup> The reasoning behind the excited utterance exception to the hearsay rule is psychological: when a person is in the instant grip of violent emotion, excitement, or pain, that person ordinarily loses capacity for the reflection necessary for fabrication, and the truth will come out.<sup>70</sup> In other words, the statement is trustworthy because it represents an event speaking through the person rather than the person speaking about the event.<sup>71</sup> Therefore, it was rational and reasonable that the victim's statements, even though she was not present at the trial, were deemed to be credible and compelling for the jury. It is reasonable and rational that a jury would consider this evidence to be proof beyond a reasonable doubt.

Edward contends that the term "boyfriend" was not consistent with the definition of "dating relationship" required by the Texas Family Code. When a term

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<sup>66</sup> *Fuentes*, 991 S.W.2d at 271.

<sup>67</sup> See *Merritt v. State*, 368 S.W.3d 516, 527 (Tex. Crim. App. 2012); *Isassi*, 330 S.W.3d at 638.

<sup>68</sup> RR III, at 14.

<sup>69</sup> See TEX. R. EVID. 802(2); *Apolar v. State*, S.W. 3d 184, 186 (Tex. Crim. App. 2005).

<sup>70</sup> See TEX. R. EVID. 803(2). *Zuliani v. State*, 97 S.W.3d 589, 595 (Tex. Crim. App. 2003). *Wilkinson v. State*, 523 S.W.3d 818, 828 (Tex. App.--- Houston [14<sup>th</sup> Dist.] 2017, pet. ref'd).

<sup>71</sup> See *Id*; *Ricondo v. State*, 475 S.W.2d 793, 796 (Tex. Crim. App. 1971).



is not defined in the jury charge, the appellate court will assume that the jury considered the commonly understood meaning of the term in its deliberations.<sup>72</sup>

The term “boyfriend” is most commonly defined as a regular male companion with whom one has a romantic or sexual relationship.<sup>73</sup> As stated, circumstantial evidence is as probative as direct evidence. The term “boyfriend” indicates the nature of the relationship, that it is either romantic or sexual or both. Circumstantially, Edward’s presence in the victim’s bedroom, sitting on the bed, was evidence that the interaction between the parties was more than casual. In conjunction with the victim’s statement, the jury could reasonably conclude a romantic or sexual relationship existed. Clearly, Edward was comfortable in the apartment, in that he was alone with her. In addition, the evidence suggests Edward was comfortable in the victim’s most intimate place, her bedroom, where the officer found him sitting. This type of evidence does not support a casual acquaintance or ordinary fraternization in a business or social context. The jury’s conclusion to believe the testimony of the police officer and the paramedic was supported by the other evidence in the case. It was reasonable for the jury to infer Edward and the victim had a dating relationship under the definition of Sec 71.002(a) and (b) Texas Family Code. The appellate court

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<sup>72</sup> See *Olveda v. State*, 650 S.W.2d 408, 409 (Tex. Crim. App. 1983).

<sup>73</sup> THE NEW OXFORD-AMERICAN DICTIONARY 203 (1<sup>st</sup> ed. 2001) University Press 2001.

should defer to the jury's determinations of credibility, and may not substitute its own judgment for that of the jury.<sup>74</sup>

Based on the evidence, the Trial Court had more than sufficient evidence to establish Edward assaulted his girlfriend. Edward's sole issue should be overruled.

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<sup>74</sup> *Thornton v. State*, 425 S.W.3d 289, 303 (Tex. Crim. App. 2014); *King v. State*, 29 S.W.3d 556, 562 (Tex. Crim. App. 2000) (in conducting legal sufficiency analysis, appellate court may not re-weigh the evidence and substitute its judgment for that of the jury).

## CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, the State prays that the judgment of the Trial Court be affirmed in all respects.

Respectfully submitted,

JACK ROADY  
CRIMINAL DISTRICT ATTORNEY  
GALVESTON COUNTY, TEXAS

*/s/ Renee Magee*

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### **CERTIFICATE OF SERVICE**

The undersigned Attorney for the State certifies a copy of the foregoing brief was sent via email, eFile service, to James Ducote, attorney for Duke Edward, at [james@ducotelawfirm.com](mailto:james@ducotelawfirm.com), on March 29, 2019.

/s/ Renee Magee  
RENEE MAGEE  
Assistant Criminal District Attorney  
Galveston County, Texas

### **CERTIFICATE OF COMPLIANCE**

The undersigned Attorney for the State certifies this brief is computer generated, and consists of 2,961 words.

/s/ Renee Magee  
RENEE MAGEE  
Assistant Criminal District Attorney  
Galveston County, Texas